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May 15, 2014

The Honorable James T. Vaughn, Jr.
Superior Court
500 N. King Street
Wilmington, DE 19801

The Honorable Patricia M. Blevins
Legislative Hall
P.O. Box 1401
Dover, DE 19903

The Honorable Peter C. Schwartzkopf
Legislative Hall
P.O. Box 1401
Dover, DE 19903

RE: Foreclosure Filing Data –1st Quarter 2014

Dear President Judge Vaughn, President Pro Tempore Blevins, and Speaker Schwartzkopf:

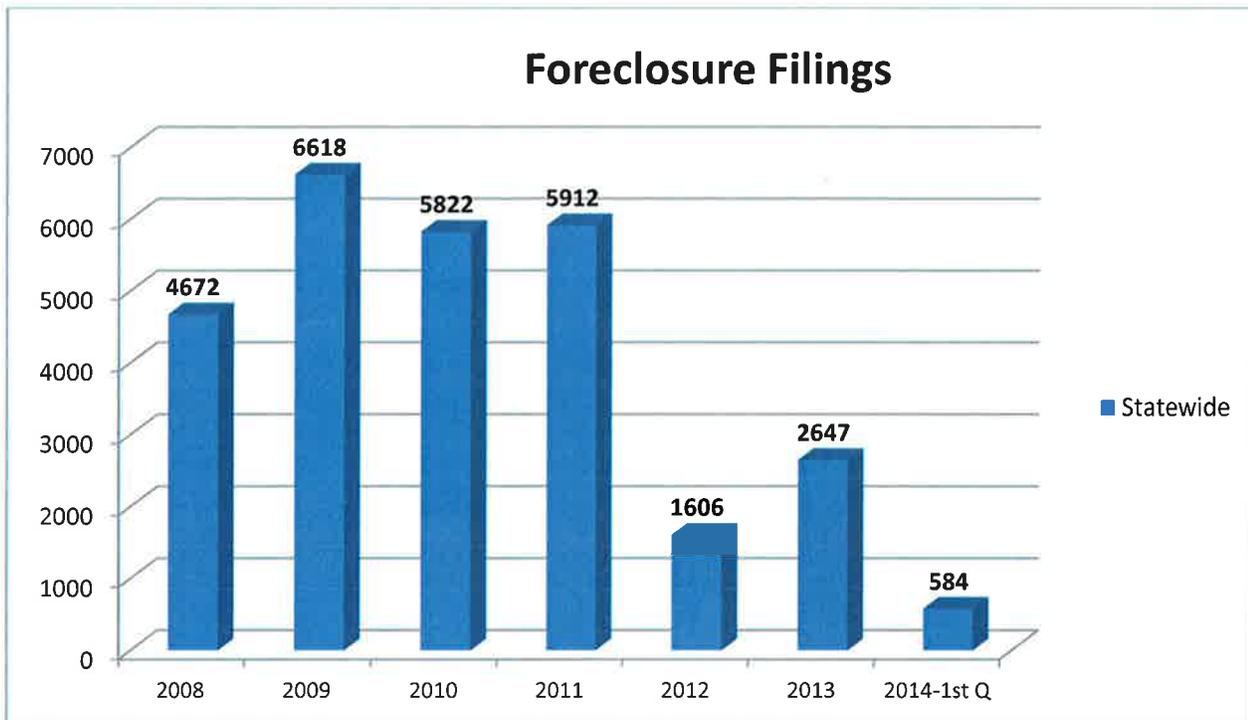
In 2011, in response to record numbers of foreclosures filed against Delaware homeowners, the General Assembly enacted a legislative package meant to afford Delawareans an opportunity to explore alternatives to foreclosure. That legislative initiative established the Automatic Residential Mortgage Foreclosure Mediation Program (the “Mediation Program”). In the most recent legislative session, House Bill No. 40 was passed, extending the Mediation Program through 2018 and making other technical changes to the administration of the Mediation Program. As the delegatee of the Superior Court under 10 *Del. C.* § 5062C(t), the Department of Justice is required to periodically report relevant statistics about the implementation of the Mediation Program. This letter serves as the First Quarter Report for 2014.

1. Statistical Snap Shot

As of March 31, 2014, 2541 eligible foreclosure actions have been filed since the Mediation Program went into effect on January 19, 2012. A more detailed overview of foreclosure statistics can be

found below, as well as on the Mediation Program website at:
<http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

The following chart demonstrates the number of foreclosure actions¹ filed statewide in the calendar years indicated.



2. Foreclosure Filings Since Effective Date of the Mediation Program

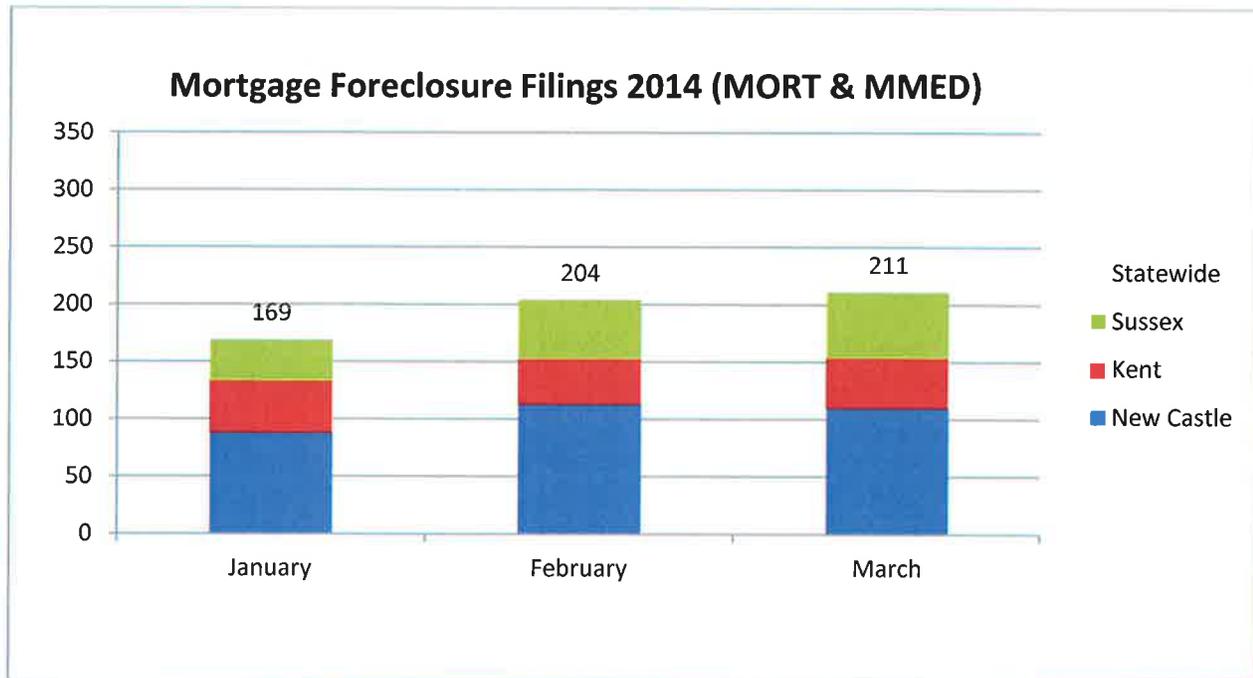
Between January 19, 2012 and March 31, 2014, there were a total of 4,529 foreclosure filings statewide with 2,544 of those cases, or 56.17%, eligible for the Mediation Program. During 2013 and continuing through the first quarter of 2014, there has been a noticeable increase in mediation-eligible cases commenced in the Superior Court.² Of the 584 foreclosure filings in 2014, 382 of those cases, or 65.4%, are eligible for the Mediation Program.

¹ This data is compiled through March 31, 2014. These figures include *scire facias* actions and, as of January 19, 2012, mediation-eligible *scire facias* actions. Additional information by county and case type is available on the Department of Justice's website:

<http://attorneygeneral.delaware.gov/fraud/cpu/automediation.shtml>

²Historically, the percentage of mediation-eligible foreclosure actions in Superior Court have been as follows: Q2 2012 – 16%; Q3 2012 – 24%; Q4 2012 – 38.6%; Q1 2013 – 63.3%; Q2 2013 – 69.2%; Q3 2013 – 63.9%; and Q4 – 59.7%.

The following chart demonstrates the number of foreclosures filed in each county from January 1, 2014 through March 31, 2014.³ Kent County continues to see the lowest number of foreclosure filings while New Castle County remains the highest.

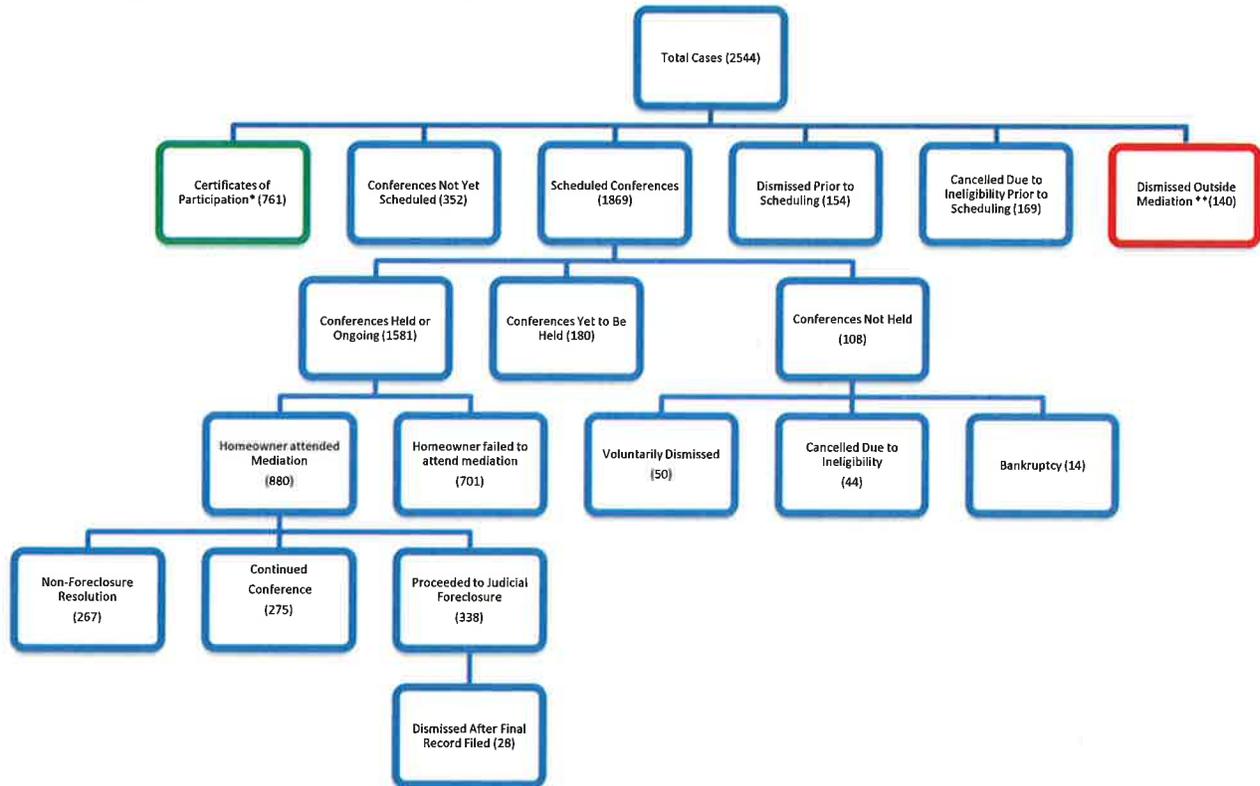


3. Mediation Conferences and Participation Data

Under the Mediation Program, the Department of Justice administers and oversees conciliation-style mediations for each case in which the homeowner has been served with process. We are able to accommodate up to 100 cases per conference day in each county. New Castle County experiences the largest case volume with approximately 60-90 mediation cases scheduled per conference day. There are two conference days per month in New Castle County and one conference day per month in each of the other two counties. During the 1st Quarter of 2014, 395 Mediation Scheduling Notices were filed with the Superior Court, and 177 Certificates of Participation were also filed during this quarter. The participation data displayed below gives a snapshot of the cases in the Mediation Program through March 31, 2014.

³ These numbers include MORT (not eligible for mediation) foreclosure actions as well as MMED (mediation-eligible) foreclosure actions.

Delaware Automatic Residential Mortgage Foreclosure Mediation Program: Overall Program Participation as of 1st Quarter 2014



Overall, the Mediation Program has a **55.66% participation rate**. Of those Delaware homeowners who elect to actively participate in the Mediation Program, **64.77% have either achieved a non-foreclosure resolution or remain in mediation and continue loss mitigation negotiations with their lender/servicer**. The remaining 35.23% have been unable to avoid foreclosure due to unemployment, severe delinquency, failure to reach an agreement on the terms of the loss mitigation offered by the lender/servicer, and/or a failure to work with a housing counselor. The overwhelming success rate of the Mediation Program thus far owes a great deal to the support of knowledgeable HUD-approved housing counselors.

Beginning with the 3rd Quarter 2013 report, we have adjusted our program participation overview chart to capture those matters which have been dismissed or cancelled prior to mediation and also those that have been dismissed or cancelled following the scheduling of mediation. Those cases that

have achieved a non-foreclosure resolution and those that remain in mediation have been separated. Additionally, we have also captured those cases which were dismissed outside of mediation⁴.

For those 701 homeowners who failed to participate in the Mediation Program, our data indicate that they often have vacated their homes prior to the foreclosure case being filed in the Superior Court. Therefore, they may not receive the information about the Mediation Program which is sent by the Department of Justice.

4. The Shadow Inventory

The shadow inventory remains a going concern in Delaware. We continue to see high delinquency rates and low foreclosure starts.⁵ Delaware reports an overall seriously delinquent rate of 6.02%, a foreclosure inventory of 3.05%, and total foreclosure starts of 0.52%.⁶ While foreclosure filings have resumed since the inception of the Mediation program and steadily increased in 2013, they have not yet returned to historical rates and delinquencies continue to accrue.

The build-up of a shadow inventory over the last two years may have negative effects for Delaware homeowners and communities. While severe delinquency over a longer period of time may serve to delay homeowners' eviction from their properties, it also reduces the chance that homeowners will be able to take advantage of loan modifications and other alternatives to foreclosure due to such deep delinquency. Full participation by lenders/servicers in the Mediation Program will allow the shadow inventory to be reduced, give homeowners the benefit of a conciliatory conference with their lender/servicer, and permit lenders/servicers the opportunity to explore options aside from the public auction of the property at sheriff's sale.

5. Going Forward

The threat of losing one's home remains a painful reality for many Delawareans. As the number of foreclosure filings has increased, the Mediation Program has demonstrated a comparatively high rate of success at avoiding foreclosure for homeowners who work with a HUD-approved housing counselor and actively participate in their mediation conferences. The recent quarterly numbers indicate that a majority of the lenders/servicers have resumed filing foreclosure actions. We anticipate this trend will continue in light of the current backlog.

⁴ Cases dismissed outside of mediation include those matters where a defendant failed to appear for mediation, the matter was cancelled as non-mediation eligible, or where mediation was unsuccessful but the case was subsequently dismissed and did not proceed to a sheriff's sale.

⁵ Mortgage Bankers Association, National Mortgage Delinquency Survey, First Quarter 2014 (May 15, 2014). The "seriously delinquent rate" is defined to include mortgage loans which are 90+ days overdue together with those loans in foreclosure.

⁶ *Id.* at 4.

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Additionally, the Department of Justice's Office of Foreclosure Prevention and Financial Education (the "OFP") has been an important complement to the Mediation Program through its community outreach and education seminars, servicer events, and the day-to-day assistance provided to homeowners via the foreclosure hotline. OFP will continue hosting outreach and education events throughout the State where homeowners are given resources and information to assist them in navigating the foreclosure process and avoiding unnecessary sheriff's sales. The work of the OFP has served many Delaware homeowners who face this difficult life event and, in many cases, helped to prevent the filing of foreclosure actions against these homeowners.

As we move into the middle of 2014, and in the coming years, the Department of Justice is ready to meet the increasing demands from higher foreclosure volumes and greater participation in the Mediation Program. When foreclosure cases are filed, homeowners will be promptly scheduled for mediation dates throughout the State, and borrowers will have the opportunity to have a meaningful conversation with their lender/servicer before the judicial foreclosure proceeds. Increasing participation and success rates of the Mediation Program will save many more Delaware homeowners from unnecessary foreclosures, increase the stability of our neighborhoods, and improve the housing market in Delaware.

Sincerely,



Matthew F. Lintner, Director
Fraud and Consumer Protection Division
Delaware Department of Justice

cc: Linda M. Carmichael, Esq. Chief Staff Attorney to the Superior Court
Hon. Jack A. Markell
Hon. Thomas R. Carper
Hon. Christopher A. Coons
Hon. John C. Carney, Jr.
Members of the 147th General Assembly